



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL*Wichita Co*Honorable J. C. Gowdy
County Auditor
Wichita Falls, Texas

Dear Sir:

Opinion Number 0-2916
Re: Authority of Commissioners' Court to purchase road machinery and pay for same out of bond fund; and authority of Commissioners' Court to construct highways without asking for competitive bids.

Your recent request for an opinion of this department on the questions herein stated, has been received. We quote from your letter as follows:

"Sometime ago a bond issue was voted in Precinct No. 3, Wichita County, Texas, in the amount of \$45,000, for the purpose of construction, maintenance and operation of macadamized, graveled or paved roads in said Precinct No. 3.

"This department is requesting your opinion on the following questions:

"1. Does the Commissioners' Court have authority to purchase machinery and pay for same out of the funds received from the sale of these bonds?

"2. Does the Commissioners' Court have authority to do this work in the same manner that they provide for other improvements and construction work on the county highway system instead of asking for bids from private contracting concerns?"

Honorable J. C. Gowdy, page #2

Authority is given by Section 52, Article 3, of the Constitution, to any county, any political subdivision of the county, any number of adjoining counties, etc., acting under legislative provision, upon a vote of a two-thirds majority of the qualified, resident, property taxpayers of the district or territory to be affected thereby, in addition to all other debts, to issue bonds in any amount not in excess of one-fourth of the assessed valuation of the real property of such district or territory, for, among other purposes, the following:

"The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof."

Your first question relates to the right of a road district under the provisions of the Constitution and pursuant to an Act of the Legislature, to devote part of an issue of bonds, duly voted by the taxpayers of the road district, to the purchase of road machinery.

It is elementary that the funds derived from the sale of bonds may not be diverted from the purposes specified in the proposition submitted to the electors. *Aransas County vs. Coleman-Fulton Pasture Company*, 191 S.W. 555; *Heathman vs. Singletary*, 12 S.W. (2d) 150; *Huggins vs. Baden*, 259 S.W. 204.

It follows that where a departure from the proposition appearing on the ballot paper is alleged, the only question is whether the expenditure contemplated is within or without the proposition on its true construction; or, under our particular set of facts, whether or not the purchase of road machinery would be incidental and necessary to the construction, maintenance and operation of roads. *Adams vs. Mullen*, 244 S.W. 283.

Construing propositions to this end, it has been held by the courts that "road" includes a bridge constituting a necessary length in the road, and that "turnpikes" means hard-surfaced roads. *Aransas County vs. Coleman-Fulton Pasture Company*; *Adams vs. Mullen*, supra.

By an analogy of reasoning this department has held that "A survey is necessary in the acquisition of a right-of-way". (Opinion Number O-962). Also, that right-of-way agents

Honorable J. C. Gowdy, page #3

may be paid from the bond fund (Opinion O-1379); that bond money may be used for fencing land acquired for right-of-way where bonds were voted for the purpose of purchasing right-of-way for the use of the State Highway Department in building State designated highways. (Opinion O-2430).

If the Commissioners' Court exercises their option to construct the roads contemplated in said \$45,000 bond issue themselves, and supervise same instead of hiring a private contractor, then we believe that there is no doubt that road machinery bought for the purpose of constructing and maintaining these particular roads would be incidental and necessary in carrying out the purpose for which the bonds were voted - that is, to construct and maintain public roads.

Therefore, it is our opinion that money derived from the sale of bonds may be used to purchase road machinery to be used in constructing and maintaining roads contemplated in said \$45,000 bond issue.

In answering question number two, we find that Article 2368a of Vernon's Annotated Revised Civil Statutes of Texas provides that except in cases of public calamity, a contract calling for the expenditure of \$2,000 or more from county funds, must be submitted for competitive bids upon published notice, and the contract must be let to the lowest and best bidder. A contract requiring the expenditure of less than \$2,000 and more than \$500 must be let at competitive bids by the Commissioners' Court, except in case of public necessity or public calamity. The purpose of these provisions is to enable counties to obtain the performance of any public work at the lowest possible cost to taxpayers. However, the Commissioners' Court has the option of carrying on the work itself and the provisions of Article 2368a do not apply to any work done under the direct supervision of the County Commissioners and paid for by the day. *Gulf Bitulithic Company vs. Nueces County* (Commission of Appeals) 11 S.W. (2d) 305; 11 Texas Jurisprudence, 843.

Therefore, it is our opinion that the Commissioners' Court has authority to do this work in the same manner that they provide for other improvements and construction work on the county highway system instead of asking for bids from

Honorable J. C. Gowdy, page #4

private contracting concerns.

Trusting that this answers your questions, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Claud O. Boothman*
Claud O. Boothman
Assistant

COB-s

APPROVED JAN 21, 1941

George S. Mann
ATTORNEY GENERAL OF TEXAS

